No. 96360-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

KING COUNTY,

Appellant,

v.

KING COUNTY WATER DISTRICTS
Nos. 20, 45, 49, 90, 111, 119, 125, *et al*.,

Respondents,

AMES LAKE WATER ASSOCIATION, DOCKTON WATER ASSOCIATION, FOOTHILLS WATER ASSOCIATION, SALLAL WATER ASSOCIATION, TANNER ELECTRIC COOPERATIVE, and UNION HILL WATER ASSOCIATION,

Intervenor-Respondents.

WASHINGTON WATER UTILITIES COUNCIL'S *AMICUS CURIAE* BRIEF

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I. INTRODUCTION

King County brings this test case with statewide consequences, seeking to validate its theory to impose unprecedented charges and requirements on utilities' use of the County rights-of-way ("ROW") through King County Ordinance 18403 (Nov. 8, 2016) (the "Ordinance"). The Ordinance is a "house of cards," or an artificial construct that purports to establish a set of requirements based on contrived findings of fact and adopted pursuant to authority that King County plainly lacks. King County relies on dormant authority to establish competing water utilities as justification for requiring a forbearance payment from utilities, yet this authority cannot be exercised under current conditions. If King County's interpretation of its authority is validated, it will unsettle the relationship between counties and utilities in serving the public by allowing King County to force utilities to enter into unlawful contracts supported by illusory consideration. The County's misstatements of its authority are pervasive, and are not limited to the sections of the Ordinance requiring utilities to pay rent that were invalidated by the court below. They extend, for instance, to the County's assertion that it has authority to compel franchise terms as to liability that are contrary to state law. The Court should not allow the County to erect a scheme to exact revenue from public water systems on false premises in a fatally-flawed ordinance, and

to impermissibly shift other burdens from the County to utilities. For these reasons, *amicus curiae* Washington Water Utilities Council ("WWUC") urges the Court to reject King County's appeal and invalidate the Ordinance in its entirety.

II. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The WWUC is the state association of over 200 Washington water utilities including cities, water districts, public utility districts, mutual and cooperative water utilities, and investor-owned water utilities that provide drinking water to over 80 percent of the state's population. WWUC members utilize King County-managed roads for delivery of water service. WWUC members own, operate, and maintain water system facilities within King County ROW, and in other counties that may seek to rely on the precedent from this case in developing their own ordinances.[1]

III. ISSUES ADDRESSED BY *AMICUS CURIAE*

King County's statement of the issues is not a fair or complete statement of the questions presented. King County asks the Court to validate its Ordinance, but does not state any issues that pertain to the specific claims of authority or the factual findings that form the basis of the Ordinance. Accordingly, the WWUC addresses the following issues regarding the Ordinance's validity and enforceability:

[1] The WWUC's Motion to File *Amicus Curiae* Brief sets forth more fully the identity and interest of the WWUC and is incorporated herein by reference.

1. Does King County have the authority to establish competing water utilities, as is required to justify a forbearance payment?

2. Is the Ordinance invalid because it imposes unlawful contractual terms based on illusory consideration?

3. Is the Ordinance's requirement that water utilities agree to "indemnify, defend and hold harmless the county against damages arising from fire suppression activities" a violation of state law regarding fire suppression, specifically RCW 70.315.060? CP 273 (Ordinance § 7.C).

IV. STATEMENT OF THE CASE

The WWUC incorporates by reference the Respondents' and the Intervenor-Respondents' respective statements of the case in section III of their response briefs, and provides the following additional facts.

The Ordinance compels utilities to enter franchise agreements with the County to use the County ROW. CP 269 (*id.* § 4). The Ordinance prohibits the County from issuing ROW construction permits to an unfranchised utility *unless* the utility is involved in negotiations likely to result in a franchise, or in other limited instances. CP 281 (*id.* § 13.A). Installation or maintenance of a utility in the ROW without a franchise subjects the utility to legal proceedings, CP 279 (*id.* § 10), enforcement, and penalty provisions, CP 280 (*id.* § 11).

The Ordinance establishes three categories of fees to be paid by a utility under the required franchise agreements: (1) "fees and costs"; (2) "compensation"; and (3) a "forbearance payment to King County." CP 266 (*id.* at 1). The fees and costs category includes application administrative processing fees. CP 269-70 (*id.* §§ 3, 4). The WWUC does not challenge the Ordinance on the basis of such administrative fees.

The second category—"reasonable compensation"—is required "in return for the right to use the right-of-way" for utility purposes. CP 277 (*id.* § 8.A). The purpose of the compensation is to raise revenue for the County's general fund. CP 272 (*id.* § 6.F); CP 1827. King County relies on RCW 36.55.010 for authority to condition the grant of a franchise on the payment of "reasonable" compensation. CP 267 (Ordinance § 1.B).

The third type of payment/fee is a forbearance payment. Section 9 provides that, "in exchange for a forbearance payment by a utility company," a utility company may provide utility service and, in exchange, the County will "forebear from establishing a King County utility to compete with the utility." CP 279 (*id.* § 9.B). The Ordinance finds that some utility companies may desire "to enter into an agreement to pay a negotiated amount in exchange for a commitment from King County . . . to forbear from competing with the utility company." CP 268 (*id.* § 1.I). The Ordinance identifies only one source of the County's authority to

establish a competing water utility in support of the imposition of a forbearance payment, finding that "RCW 35.58.050 authorizes King County to perform water supply." CP 268 (*id.* § 1.H).

In addition to fees and payment requirements, the Ordinance compels franchisees for water and sewer utilities to "indemnify, defend and hold harmless the county against damages arising from fire suppression activities during fire events." CP 273 (*id.* § 7.C.2).

V. ARGUMENT

The Ordinance imposes fees, payments, and other obligations that are premised on flawed assertions of King County's authority or are contrary to state law. The Ordinance is premised on the false notion that King County could establish a competing water utility, and it seeks to compel franchise terms that are contrary to state law.

A. Section 9 of the Ordinance is Premised on An Artificial Construction of King County's Authority.

Section 9 of the Ordinance[2] authorizes King County to require a forbearance payment from water utilities as a *quid pro quo* in exchange for

[2] The superior court did not expressly invalidate Section 9 of the Ordinance, and instead only invalidated Sections 1.F, 1.G, 7.B, 8, and 10.B, and the reference to franchise compensation in Section 10.A. Order and J. on Mots. for Summ. J., *King Cty. v. King Cty. Water Districts Nos. 20, 45, 49, 90, 111, 119 & 125*, No. 18-2-02238-0 SEA, at 7 (Sept. 4. 2018). The Court may also invalidate Section 9. An appellate court may affirm a grant of summary judgment on an issue not decided by the trial court provided that it is supported by the record and within the pleadings and proof. *Int'l Bhd. of Elec. Workers v. Trig Elec. Constr. Co.*, 142 Wn.2d 431, 435, 13 P.3d 622 (2000), *abrogated on other grounds by W.G. Clark Const. Co. v. Pac. Nw. Reg'l Council of Carpenters*, 180 Wn.2d

King County's agreement not to establish a competing water utility. CP 279 (Ordinance § 9). As explained below, King County's claimed authority to provide water utility services does not survive examination. To obtain authority to operate as a water utility and to eliminate other barriers that preclude King County from doing so, a series of speculative, hypothetical events that are outside of King County's control would need to occur. King County's misstatement of its authority to establish a competing utility renders arbitrary King County's justification for requiring a forbearance payment; renders the forbearance payment lacking in consideration, and thus, inconsistent with general contract law; and requires the conclusion that the forbearance payment is a disguised, unauthorized franchise compensation fee.

1. King County Lacks the Necessary Authority to Establish a Competing Water Utility.

Today King County lacks the authority to form and operate a water utility, and it had no such authority at the time the Ordinance was enacted. As a municipal corporation, King County has only those powers expressly granted, necessarily or fairly implied, or those incident to the powers

54, 322 P.3d 1207 (2014). King County requests that the Court issue a declaratory judgment that "Ordinance 18403 and Rule RPM 9-2 are within the scope of King County's authority, including its authority to establish and regulate the use of County ROW," and thus asks this Court to validate Section 9 in addition to the other portions of the Ordinance. CP 7 (Compl. ¶ 27). In addition, issues pertaining to Section 9 were plead in the case below. CP 1671, CP 1687.

expressly granted, or essential to the declared objects and purposes of the corporation. *Port of Seattle v. Wash. Util. and Transp. Comm'n,* 92 Wn.2d 789, 794–95, 597 P.2d 383 (1979). "If there is a doubt as to whether the power is granted, it must be denied." *Id.* (citations omitted).

The Ordinance cites only one source of authority for King County to perform a "water supply" function—RCW 35.58.050.[3] CP 268 (Ordinance § 1.H). RCW 35.58.050 identifies an enumerated list of "metro" powers, including the power to perform water supply functions that a metropolitan municipal corporation *may* exercise. A mandatory prerequisite must be met prior to the exercise of that authority. King County is not "authorized" to perform metro functions, including water supply, until approved by a vote of the people. RCW 35.58.050; RCW 35.58.100. Therefore, King County has only dormant authority under RCW 35.58.050 that cannot be exercised under current conditions.

Where necessary prerequisites to the exercise of authority have not been met, the County has no authority to exercise such authority. *Ted Rasmussen Farms, LLC v. State of Wash.*, 127 Wn. App. 90, 98, 110 P.3d

[3] To the extent that King County now attempts to cite any other source of authority for performing the water supply function, such an explanation would be nothing more than a post hoc rationalization. *Palermo at Lakeland, LLC v. City of Bonney Lake*, 147 Wn. App. 64, 83, 193 P.3d 168 (2008) (rejecting City's justification of ordinance based on expert report prepared after adoption of the ordinance because it would "allow it to adopt any fee ordinance without any reasonable basis and, then attempt to justify it only when a citizen files a lawsuit challenging the ordinance.") *Keego Harbor Co. v. City of Keego Harbor*, 657 F.2d 94, 98 (6th Cir. 1981) (post hoc rationalizations are inadequate to support city's ordinance).

823 (2005) (agency exceeded its enabling legislation by acting when statutory prerequisite was not met); *In re Marler*, 108 Wn. App. 799, 808, 33 P.3d 743 (2001) (parole board lacked authority to grant parole where a mandatory prerequisite had not been met).

King County cannot rely upon RCW 35.58.050 as authority to perform a water supply function because no vote of the people has approved King County's exercise of the water supply function. Indeed, King County has been authorized to perform only two metro powers—water pollution abatement and transportation—which are independent of the water supply function pursuant to RCW 35.58.050. King Cty. Code ch. 28.84 (water pollution abatement); *id.* ch. 28.94 (transportation).

Nor can King County base its authority on some hypothetical future approval of voters. It is purely speculative that voters would approve King County to function as a water supplier, and history undermines any assumption to the contrary. In 1958, voters rejected a proposal for a King County agency with authority over a range of issues, and only authorized King County's predecessor to deal with wastewater treatment. Although King County's metro powers have been expanded to include transportation, water supply is not a function that voters have authorized King County to perform.

2. King County is Precluded From Forming and Operating a Public Water System.

Even if voters authorized King County to perform the water supply function, pursuant to the Water System Coordination Act of 1977 ("Coordination Act"), chapter 70.116 RCW, King County is barred from establishing a water utility in areas where the County itself administers coordinated water system plans ("CWSPs") and where Department of Health ("DOH") has designated service areas for existing water systems. King County is precluded from forming a water system due to today's circumstances.

To "maximize the efficient and effective development of the state's public water supply," RCW 70.116.010, the legislature directed DOH to coordinate the planning of public water systems under the Coordination Act. *Singh v. Covington Water Dist*., 190 Wn. App. 416, 424, 359 P.3d 947 (2015). The Coordination Act directs county legislative authorities to designate critical water supply service areas and to develop a CWSP for designated areas. RCW 70.116.040, -.050. The CWSP must be submitted to the DOH for approval. RCW 70.116.060. The establishment of critical water supply areas and approval of CWSPs precludes the formation of new water systems within the covered area, unless an existing water system cannot provide service. RCW 70.116.060(3)(b).

Pursuant to the Coordination Act, King County declared four critical water supply areas: South King County, Skyway, Vashon, and East King County. King Cty. Code § 13.28.010. Before the County could establish water systems, the County board was required to adopt a water general plan, RCW 36.94.030, and the plan had to be reviewed by a review committee. RCW 36.94.050. For each of the four critical water supply areas, King County approved CWSPs. The CWSPs established external boundaries of the critical area and also defined service areas of the water purveyors. King Cty. Code § 13.28.025 (Skyway); § 13.28.035 (Vashon); § 13.28.045 (South King County); § 13.28.055 (East King County). In turn, DOH approved each of the CWSPs.

Following the establishment of a CWSP, no new public water systems may be approved or created unless certain criteria are met. *See, e.g.,* RCW 70.116.060; RCW 70.119A.060. King County is prohibited from forming a new public water system unless the County, acting in its role as the "local legislative authority," determines that an existing system is unable to provide service "in a timely and reasonable manner." RCW 70.116.060(3)(b); *see also* ch. 246-293 WAC.

King County has neither made such a determination as to existing water system services, nor is it reasonable to assume that King County will have the grounds for making such a determination. Indeed, the

Ordinance does not make any findings of fact as to the capability of existing public water systems. Without making such a determination, abolishing the CWSPs it has enacted and presently administers, and obtaining DOH regulatory approval, King County cannot exercise the authority that it purports to have without violating the Coordination Act.

Moreover, King County cannot unilaterally abolish the CWSPs. *See* RCW 36.94.170 (consent of existing utility required before county may operate water system); RCW 36.94.020 (prohibiting counties from condemning "water systems of any municipal corporation or private utility"). In light of the Coordination Act, the County's claim that it could establish a competing water utility rings hollow.

3. King County's Lack of Authority to Function as a Water Supplier Renders the Ordinance Unlawful.

King County is precluded from forming and operating a water utility, yet Section 9 of the Ordinance is premised on King County's fictional authority to operate a water utility because the forbearance payment contemplated by Section 9 is to be made by utilities in exchange for the County forbearing from establishing a competing utility. CP 279 (Ordinance § 9). King County's improper reliance on its purported authority renders Section 9 and related sections of the Ordinance void for the following reasons.

i. The County acted arbitrarily in enacting the Ordinance.

The Court may set aside legislative action that is arbitrary or unlawful. *Teter v. Clark Cty.,* 104 Wn.2d 227, 234, 704 P.2d 1171 (1985); *Tarver v. City Comm'n In & For City of Bremerton*, 72 Wn.2d 726, 731, 435 P.2d 531 (1967).. An act is arbitrary or capricious if it is a willful and unreasonable action, without consideration and regard for facts or circumstances. *Palermo at Lakeland, LLC*, 147 Wn. App. at 78.

The Ordinance is arbitrary because the forbearance payment is premised on King County's assertion of water supply authority, which does not exist. CP 268 (Ordinance § 1.H). *Boe v. City of Seattle,* 66 Wn.2d 152, 401 P.2d 648 (1965) is instructive. In *Boe*, a city established a sewer connection charge by ordinance. The city contended that the ordinance was passed pursuant to statutory authority that authorized the city to make "reasonable connection charges." *Id.* at 154. The Court found that the fee was not reasonable. *Id.* at 155. Therefore, the Court determined that the statutory authority on which the ordinance was premised was not a proper basis for the ordinance, and declared the ordinance void. *Id.* As in *Boe,* Section 9 is not supported by the authority on which it is premised. Thus, King County's justification for the forbearance payment requirement was arbitrary and the Ordinance is void.

ii. The Ordinance is void because it rests on contrived consideration and would authorize unlawful contracts.

Section 9 is also void due to King County's lack of authority to function as a water utility because, without such authority, the Ordinance authorizes contracts that lack consideration and are, therefore, contrary to general principles of contract law. A well-established principle of contract law is that promises may not lack consideration. *Huberdeau v. Desmarais*, 79 Wn.2d 432, 440, 486 P.2d 1074 (1971). Where an entity is already obligated to forbear from taking an action, a contract based on a promise of forbearance from the same is want of consideration. *Id.* at 442 (contract based on promise of forbearance was void for want of consideration where creditor was already obligated to forbear); *Barnes v. Spurch*, 121 Wash. 338, 340, 209 P. 513 (1922), *aff'd*, 121 Wn. 338, 212 P. 583 (1923) (an agreement which purports to grant a right that a recipient already possesses fails for lack of consideration).

King County falsely claims water supply authority to create an illusion of consideration, stating that "in exchange for a forbearance payment by a utility company," the County may contract to forebear from establishing a competing utility. CP 279 (Ordinance § 9.B.1). As demonstrated above, the County has no such authority and is *already* required to forbear from acting as a water supplier under the Coordination

Act. Thus, the payment is not consideration for King County's promise not to form its own utility.

The Ordinance states that the payment is also made in exchange for the County's forbearance from requiring the utility to provide compensation for use of the ROW. Respondents and Intervenor-Respondents explained why King County is also required to forbear from requiring such compensation. Section 9 of the Ordinance is inconsistent with general contract law[4] because the forbearance agreements contemplated by the Ordinance would be void for lack of consideration.

iii. The forbearance payment is an unlawful, disguised franchise compensation fee.

The "forbearance payment" must be viewed as what it was truly intended to be—a franchise compensation fee. Under Section 9, the forbearance payment is made in exchange for two commitments on the part of the County; the County: (1) will not operate a competing utility; and (2) will not impose a franchise compensation fee. Because the County must already forbear from establishing a competing utility, the only consideration for the forbearance payment allowed by the Ordinance is the

[4] Even under the County's home rule argument, under which it asserts it has the power to enact any ordinance it desires unless expressly prohibited by law, Section 9 of the Ordinance must be struck down. *See* Appellant King Cty.'s Reply Br. at 46 [hereinafter *Appellant Reply*]. Ordinances adopted by home rule counties must be consistent with the general law. *State ex rel. Carroll v. King Cty.*, 78 Wn.2d 452, 457–58, 474 P.2d 877 (1970).

County's agreement not to impose a franchise compensation fee. The Ordinance attempts to cloak the imposition of mandatory "rental" charges in the clothing of a forbearance agreement to circumvent legal prohibitions against, or lack of legal authority in support of, such rental charges. As fully set forth in the Respondents' and Intervenor-Respondents' briefs, King County lacks authority to require such compensation, and thus lacks authority to achieve the same effect as a franchise fee by merely calling the fee by a different name.

The County's inclusion of a forbearance payment was no doubt designed to seek shelter under this Court's decision in *Burns v. City of Seattle,* 161 Wn.2d 129, 164 P.3d 475 (2007). *See* Appellant Reply at 45, n.36. *Burns* does not validate the County's "forbearance payment" because the fees at issue in *Burns* are readily distinguishable. Moreover, *Burns* reaffirms that the Section 9 payment is not a forbearance payment, but a mandatory rental charge for which the County must have authority.

In *Burns,* Seattle City Light ("SCL") entered into franchise agreements with cities, whereby SCL agreed to pay a percentage of revenues received from the cities' power customers in exchange for the cities' promise to forbear from establishing their own municipal electric utilities. *Burns,* 161 Wn.2d at 134–35. The principle issue was whether this contractual payment was prohibited by RCW

35.21.860(1), which provides that "[n]o city or town may impose a franchise fee or any other fee or charge of whatever nature or description upon the light and power…distribution business[ ]." RCW 35.21.860(1).

The Court held that the contractual payment was not prohibited by RCW 35.21.860(1), explaining that the cities did not exact the payments through their governmental powers of taxation and regulation and the payments were not made in exchange for the privilege to use the streets. *Burns,* 161 Wn.2d at 145. Instead, the Court found that the payments were a contractual debt incurred in exchange for valuable consideration independent from a franchisee's right to occupy the streets. *Id.* at 153. The Court explained that SCL made a reasonable business decision in agreeing to the payments in exchange for the cities' agreement not to compete, as the potential loss of its ratepayer base threatened to undermine its ability to provide low-cost service to its customers. *Id.* at 157.

The forbearance payment is distinguishable from the payment in *Burns.* Indeed, the factors considered in *Burns* support the proposition that the forbearance payment is merely a disguised franchise compensation fee. First, unlike in *Burns*, the forbearance payment is imposed through the Ordinance, which neither contemplates negotiation or adjustment of said payment. CP 279 (Ordinance § 9). Second, as discussed above, there is no reasonable basis upon which the utilities

would agree to a "forbearance payment." This is antithetical to the payment in *Burns*, which the Court concluded was not a fee because the cities' agreement not to compete was valuable consideration independent from a franchisee's right to occupy the streets. *Burns,* 161 Wn.2d at 157. Thus, the forbearance payment is a fee, not consideration.

Because the forbearance payment is nothing more than a disguised franchise compensation fee, King County was required, but failed, to have clear, direct authority to impose such a fee. As the *Burns* Court determined, when a municipality imposes taxes and fees, it acts in a governmental or sovereign—rather than a proprietary—capacity. Acting in a governmental capacity requires clear, direct authority:

> When a municipality is exercising its governmental powers, "less opportunity exists for invoking the doctrines of liberal construction and of implied powers." . . . In exercising its proprietary power, a municipality may not act beyond the purposes of the statutory grant of power or contrary to express statutory or constitutional limitations. But a municipality has broad discretion to operate within those parameters . . .

Id. at 154 (citations omitted). Therefore, to impose the forbearance payment/disguised fee, the County was required to have statutory authority. Here, the County lacks express statutory authority and relies on implied or indirect authority. As fully set forth in the Respondents' and Intervenor-Respondents' briefs, and as correctly decided by the Superior Court, King County lacks authority to impose such a fee.

B. The Ordinance Overreaches to Compel Franchise Terms as to Liability and Risk Management.

Other sections of the Ordinance demonstrate that King County is overreaching. Although the Ordinance relies upon the idea that "[f]ranchises are memorialized in a franchise agreement that is negotiated by the parties and approved by the King County council," CP 267 (*id.* § 1.E), the Ordinance dictates franchise terms and conditions that undercut the Ordinance's empty recitals as to negotiation. For example, the Ordinance mandates a franchise term that compels a water utility to "indemnify, defend and hold harmless the county against damages arising from fire suppression activities during fire events."[5] CP 273 (Ordinance § 7.C.2). King County does not dispute that it will mandate this term, but instead asserts that the term is "negotiated" because utilities may choose to locate their facilities outside of the ROW rather than enter into the agreement. Appellant Reply at 58. This assertion merely underscores that the franchise agreement is an "unconscionable, adhesion contract[ ]": a contract presented in take-it or leave-it form by a party with unequal bargaining power. *Yakima Cty. (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 375, 858 P.2d 245 (1993)(citation omitted). Utilities already using the ROW have no meaningful choice but to enter

[5] The Superior Court did not expressly invalidate Section 7.C. The Court may also invalidate Section 7.C. *See supra* note 2. Issues pertaining to Section 7.C were plead in the case below. CP 1686.

into franchise agreements, regardless of their terms, because those utilities have already invested rate-payer funds in the development of infrastructure in the ROW, which cannot be relocated without significant expense and disruption to service.

The required indemnification term is directly at odds with legislation enacted in 2013, which was intended to resolve uncertainty regarding liability for fire suppression that had caused some purveyors to say they would no longer provide hydrant service. Namely, RCW 70.315.060 provides for allocating liability risks relating to fire suppression activities "as the parties mutually agree." The default is that municipal utilities are not liable for damages that arise out of fire events. *See* H.B. Rep. on HB 1512, 63rd Leg., Reg. Sess. (2013). Although this default *may* be modified by agreement, the statute is clear on its face that indemnification provisions must be mutually agreed upon, and the House Bill Report cited by King County, Appellant Reply at 57, n.48, does not state anything to the contrary. RCW 70.315.060 is consistent with the principle that franchises are negotiated contracts, not contracts of adhesion. Yet, the Ordinance *requires* water utilities to agree to bear all liability risk related to fire suppression. The Ordinance provides for a "franchise of adhesion" contrary to the 2013 fire suppression law.

Moreover, even if Section 7.C was not contrary to state statute, King County nevertheless still needs *authority* to impose this requirement. The mandatory nature of this term (and others) demonstrate that King County is acting in a governmental capacity, and thus must have specific authority to require these conditions. *Burns*, 161 Wn.2d at 154. Because it lacks such specific statutory authority, King County wrongly suggests that it should enjoy the discretion that it is granted when acting in a proprietary capacity. The Ordinance's compelled liability terms undermine the false pretense of the franchise agreements as negotiated agreements. Thus, King County cannot rely on proprietary powers to command fire protection liability terms contrary to statute.

VI. CONCLUSION

The WWUC urges the Court to affirm the Superior Court's decision and declare the Ordinance invalid in its entirety.

DATED this 2nd day of August, 2019.

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CERTIFICATE OF SERVICE

I, Amanda Kleiss, declare as follows:

That I am over the age of 18 years, not a party to this action, and competent to be a witness herein;

That I, as a paralegal in the office of Van Ness Feldman LLP, caused true and correct copies of the following documents to be delivered as set forth below:

1. Washington Water Utilities Council's *Amicus Curiae* Brief;
2. Certificate of Service;

and that on August 2, 2019, I caused the foregoing documents to be e-filed and e-served electronically through Washington State Supreme Court's web portal as follows:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington on this 2nd day of August, 2019.

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